

No. 12181

United States
Court of Appeals
for the Ninth Circuit

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Appellant,

vs.

H. M. GOCHNOUR and MRS. H. M. GOCH-
NOUR, His Wife,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the Eastern District of Washington,
Northern Division

FILED

MAR 28 1949

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

CLINTON J. CRANDALL,

ROY C. FOX,

905½ Third Avenue,
Seattle 4, Washington,

Attorneys for Plaintiff and Appellant.

FRANK P. WEAVER,

204 Columbia Building,
Spokane 8, Washington,

Attorney for Defendants and Appellees.

In the District Court of the United States
for the Eastern District of Washington,
Northern Division

No. 755

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

H. M. GOCHNOUR and MRS. H. M. GOCH-
NOUR, His Wife,

Defendants.

COMPLAINT FOR INJUNCTION AND
RESTITUTION

Comes Now the plaintiff above named and alleges
as follows:

FOR ITS FIRST CAUSE OF ACTION

I.

That the plaintiff is the duly qualified Housing Expediter, Office of the Housing Expediter, an agency of the United States Government created by the Veterans' Emergency Housing Act of 1946 as amended, (50 U.S.C.A. App. Sec. 1821 et seq.) and brings this action pursuant to Executive Order 9841 (12 F.R. 2645), Executive Order 9809 (11 F.R. 14,281) and the Emergency Price Control Act of 1942 as amended (50 U.S.C.A. App. Secs. 910-946), said Emergency Price Control Act heretofore being referred to as the Act.

II.

Jurisdiction of this action is conferred upon this Court by Section 205(a), Section 205(c), and Section 205(e) of the Act, as amended.

III.

That the defendants, H. M. Gochmour and Mrs. H. M. Gochmour, husband and wife, at all times herein mentioned were the landlords of certain housing accommodations consisting of one 2-story dwelling house and 6 frame houses, all situated in Route 4, Pierce Street, in the City of Wenatchee, Washington, and within the Wenatchee Defense Rental Area.

IV.

That in the judgment of the expediter, defendants have violated the provisions of the Emergency Price Control Act and regulations issued pursuant thereto, in that defendants demanded, collected and received from one Keith Van Etten, the tenant occupying House No. 1 in the hereinbefore described housing accommodations for a period from April 1, 1947, to and including June 30, 1947, rentals in excess of the maximum legal rental established for said accommodation, in that defendant charged said tenant during said period for rental for said accommodation the sum of \$60.00 per month of said period, that the legal ceiling rent for said accommodation was the sum of \$41.50, constituting a monthly overcharge of \$18.50 for a period of 3 months or a total overcharge of \$55.50. That defendants demanded, collected and received from tenant, M. W. Callaway of House No. 6, in

said hereinbefore described accommodations for the period from and including August 1st, 1945, to and including June 30th, 1947, rentals in excess of the legal ceiling therefor; that the legal ceiling rent on said accommodation for said period was the sum of \$16.50 per month; that the defendant charged said tenant for each and every month the sum of \$31.50, constituting an overcharge of \$15.00 per month for a period of 23 months, a total overcharge of \$345.00 for said period.

For the Second Cause of Action Plaintiff complains and alleges:

I.

That plaintiff is the duly appointed and qualified Housing Expediter, Office of the Housing Expediter, an agency of the United States Government, created by the Veterans' Emergency Housing Act of 1946 as amended, (50 U.S.C.A. App. Sec. 1821 et seq.) and bring this action as such Housing Expediter pursuant to the Housing and Rent Act of 1947 (50 U.S.C.A. App. Sec. 1881-1902) as extended and amended by Public Laws 422 and 464 of the 80th Congress, hereinafter referred to as the Act.

II.

That jurisdiction of this action is vested in the above-entitled Court under Sec. 206(b) of the Act.

III.

That the defendants, H. M. Gochmour and Mrs. H. M. Gochmour, husband and wife, at all times herein mentioned were the landlords of certain housing accommodations consisting of one 2-story

dwelling house and 6 frame houses, all situated in Route 4, Pierce Street, in the City of Wenatchee, Washington, and within the Wenatchee Defense Rental Area.

IV.

That in the judgment of the Expediter, the defendants and each of them as landlord and manager have violated the provisions of the Act and of the regulations issued thereto and will continue to violate such Act in such regulation by demanding, receiving and collecting from tenants occupying the housing accommodations hereinbefore described in Paragraph III. of this Complaint, rentals in excess of the maximum legal rents fixed and established by law for such accommodations.

V.

That the violations herein complained of are set forth specifically and in detail in Exhibit "A" attached hereto, which Exhibit "A" is by reference made a part of this paragraph and complaint as fully as though set forth in detail herein.

Wherefore plaintiff prays judgment on his first cause of action:

1. That an order be entered in the above-entitled cause requiring and directing the defendants to repay to the tenant, Keith Van Etten, for the period from April 1, 1947, to June 30, 1947, overcharges in the amount of \$55.50; and to M. W. Callaway of House No. 6 from the period August 1, 1945, to June 30, 1947, overcharges in the amount of \$52.50.

Plaintiff further prays judgment on his second cause of action:

1. That the defendants be required by order of this Court to refund to Dorothy Petrie, tenant occupying House No. 4 for the period from April 13, 1948, to May 13, 1948, overcharges in the amount of \$18.50; to Keith Van Etten, tenant of House No. 1, for the period from July 1st, 1947, to and including July 1st, 1948, a period of 13 months, overcharges in the total amount of \$240.50; to Joe Soden, tenant occupying House No. 2, from April 12, 1948, to May 16, 1948, overcharges in the total amount of \$17.50.

Plaintiff further prays judgment on his second cause of action:

2. For an Injunction and Restraining Order enjoining and restraining the defendants and each of them, their agents and employees, from demanding, collecting, or receiving rentals on any of their housing accommodations situated at Route 4, Pierce Street, in Wenatchee, Washington, in excess of the Maximum legal ceiling rentals fixed and established by law.

3. That plaintiffs have and recover costs and disbursements herein.

4. And be accorded such other relief as may be equitable in the premises.

Dated at Seattle, Washington, this 9th day of July, 1948.

CLINTON J. CRANDALL,

ROY C. FOX,

Attorneys for Plaintiff.

EXHIBIT "A"

H. M. Gochmour, et al—Rt. 4, Pierce Street
Wenatchee, Wash.

House No. 4, Tenant, Dorothy Petrie; Rental Period, 4/13/48 to 5/13/48 (1); Max. Leg. Rent, \$31.50; Rent Charged, \$50.00; Overcharge (per mo.), \$18.50; Total Overcharge, \$18.50.

House No. 4, Tenant, Keith Van Etten; Rental Period, 7/1/47 to and inc. 7/1/48 (13); Max. Leg. Rent, \$41.50; Rent Charged, \$60.00; Overcharge, (per mo.), \$18.50; Total Overcharge, \$240.50.

House No. 2, Tenant Joe Soden; Rental Period, 4/12/48 to 5/16/48 (1 mo. 4 days); Max. Leg. Rent, \$25.00; Rent Charged, \$40.00; Overcharge (per mo.), \$15.00; Total Overcharge, \$17.50.

[Endorsed]: Filed July 12, 1948.

[Title of District Court and Cause.]

MOTION TO DISMISS

Come Now the Defendants above named by their attorney, Frank P. Weaver, and move the Court as follows:

I.

To dismiss Plaintiff's first cause of action in the above-entitled matter for the reason and upon the grounds that said first cause of action failed to state a claim against these Defendants or either of them upon which relief can be granted.

II.

To dismiss Plaintiff's second cause of action in the above-entitled matter for the reason and upon the grounds that said second cause of action fails to state a claim against said Defendants or either of them upon *which* relief can be granted.

Dated this 6th day of August, 1948.

FRANK P. WEAVER,
Attorney for Defendants.

[Endorsed]: Filed August 6, 1948.

[Title of District Court and Cause.]

OPINION OF THE COURT

Clinton J. Crandall, Roy C. Fox, 3314 White Building, Seattle 1, Washington, Attorneys for Plaintiff.

Frank P. Weaver, 204 Columbia Building, Spokane 8, Washington, Attorney for Defendants.

Before Driver, District Judge.

Defendants' motion to dismiss the first cause of action of the complaint raises the question whether this Court can order a landlord to repay to his tenant rental collected in excess of the legal maximum, established under the Emergency Price Control Act of 1942,¹ in an action commenced by the Housing

¹56 Stat. 23, as amended, 56 Stat. 765, 58 Stat. 632 (Stablization Extension Act of 1944), 59 Stat. 306 and 60 Stat. 664. The volume of U.S.C.A. in which the original Act was included was replaced in 1944. See 50 U.S.C.A. Appendix 901, et seq.

Expediter more than a year after the termination of the Act.

The complaint was filed July 12, 1948. The first cause of action alleges that from April 1, 1947, to June 30, 1947, defendants, as landlords, collected from a certain tenant rental in excess of the legal maximum. The prayer asks that the defendants be required to repay to the tenant the amount of the overcharge.

The Price Control Act finally terminated on June 30, 1947, but it contained a saving clause to the effect that as to any offense committed or right or liability incurred prior to its termination date, the provisions of the Act should "be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense."² Unless plaintiff's first cause of action for restitution to the tenant comes within that saving clause, it must be dismissed.

Plaintiff concedes that an action brought under Sec. 205(e) of the Act,³ usually referred to as a "treble damage action," would be barred by the one-year limitation imposed by the provisions of that section. He claims, however, that he is not seeking any legal remedy provided for in Sec. 205(e), but is pursuing a different, independent, equitable remedy, available to him under Sec. 205(a) (50 U.S.C.A. Appendix, 925(a)), which reads as follows:

²50 U.S.C.A. Appendix (1947 pocket part) 901(b).

³50 U.S.C.A. Appendix (1947 pocket part) 925(e).

“Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act (section 904 of this Appendix), he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provisions, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.”

It has been held, as plaintiff asserts, that when the equity jurisdiction of a court has been invoked in a proper case, arising under Sec. 205(a), the court may, in the exercise of its broad, traditional, equity powers, order repayment to the tenant of rental overcharges. *Porter v. Warner*, 328 U. S. 395. The crucial question in the present case, however, is whether there is any basis for the exercise of equity jurisdiction at all under Sec. 205(a) in an action brought after the termination of the Act. The section authorizes application to an “appropriate court” only for two specific purposes, namely, to enjoin violation of the Act and to enforce compliance with its provisions. It authorizes the court, in order to accomplish such purposes, to grant a “permanent or temporary injunction, restraining order, or other order.” In *Porter v. Warner Co.*, *supra*, an action for both injunctive relief and restitution, the Supreme Court held that to do full justice and award complete relief, the District Court,

as an incidental by-product of the exercise of its equity functions, could order restitution. The majority opinion (see pages 399 and 400) points out that enforcement of restitution to the tenant of illegally collected overcharges may be justified as a proper "other order" under Sec. 205(a) on either of two theories, first, as an "equitable adjunct" to a decree enjoining violation of the Act, or second, as an appropriate means of assisting to enforce compliance with the Act.

In *Creedon v. Randolph*, 165 F. (2d) 918, also cited by plaintiff, the Administrator of Price Controls brought an action under Sec. 205(a) to compel a landlord to pay back to a tenant rental collected in excess of the legal maximum. The action was commenced after the one-year limitation against an action by the tenant for damages had run and the Administrator did not ask for a prohibitory injunction against future violations. The trial court concluded that there was not sufficient legal basis for ordering restitution in the exercise of the court's equity powers. The Court of Appeals reversed. It held that the lower court should have exercised its discretion to determine whether restitution should be ordered as an aid to enforcement of "this law," since requiring "restitution of overcharges tends to enforce the law prohibiting them."

In each of the cited cases the action was commenced and disposed of in the trial court before the termination of the Price Control Act. In the instant case, however, the Act had expired before the complaint was filed. The saving clause, which authorizes "any proper suit" to enforce rights or lia-

“Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act (section 904 of this Appendix), he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provisions, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.”

It has been held, as plaintiff asserts, that when the equity jurisdiction of a court has been invoked in a proper case, arising under Sec. 205(a), the court may, in the exercise of its broad, traditional, equity powers, order repayment to the tenant of rental overcharges. *Porter v. Warner*, 328 U. S. 395. The crucial question in the present case, however, is whether there is any basis for the exercise of equity jurisdiction at all under Sec. 205(a) in an action brought after the termination of the Act. The section authorizes application to an “appropriate court” only for two specific purposes, namely, to enjoin violation of the Act and to enforce compliance with its provisions. It authorizes the court, in order to accomplish such purposes, to grant a “permanent or temporary injunction, restraining order, or other order.” In *Porter v. Warner Co.*, *supra*, an action for both injunctive relief and restitution, the Supreme Court held that to do full justice and award complete relief, the District Court,

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In each of the cited cases the action was commenced and disposed of in the trial court before the termination of the Price Control Act. In the instant case, however, the Act had expired before the complaint was filed. The saving clause, which authorizes "any proper suit" to enforce rights or lia-

bilities incurred prior to termination, could not then cover suits in equity under Sec. 205(a) either to enjoin future violation of the Act or to enforce compliance with the Act for the obvious reason that the Act had ceased to exist. Since equitable jurisdiction to enter an injunction decree or compliance order had died with the Act, the incidental and dependent power to order restitution, likewise, had expired.

Plaintiff points out that while Congress permitted the Price Control Act to terminate June 30, 1947, it immediately enacted the Housing and Rent Act of 1947,⁴ and thus continued in operation essential control of rentals. He argues that a court of equity may, in order to assist in carrying out the purpose of Congress to combat inflation in the housing rental field, order restitution of rental overcharges under the old Act to aid in the enforcement of the new one.

The Housing and Rent Act is not, in any sense, an extension or continuation of the Price Control Act, but a wholly new and independent statute. It is narrower in scope, does not have the same sanctions for enforcement, and differs in other respects, which I shall not detail here, from the Price Control Act.

The power of this court to order restitution or overcharges under an expired statute cannot be derived from the desirability of aiding in the enforcement of some other and different statute. I

⁴61 Stat. 193; 50 U.S.C.A. Appendix (1947 pocket part) 1881 et seq.

find no justification for such an extraordinary extension of the equity powers of the court in the provisions of either the old or the new Act.

The motion to dismiss the first cause of action of plaintiff's complaint will be granted.

SAM M. DRIVER,

United States District Judge.

Dated: This 28th day of December, 1948.

Copy mailed the Attorney General, West Publishing Co., and each attorney this 4th day of January, 1949.

A. A. LaFRAMBOISE,

Clerk.

[Endorsed]: Filed December 28, 1948.

District Court of the United States for the Eastern
District of Washington, Northern Division

Civil Action No. 755

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

H. M. GOCHNOUR and MRS. H. M. GOCH-
NOUR, His Wife,

Defendants.

ORDER RE: MOTION TO DISMISS

This Matter came on for the consideration of the above-entitled Court upon the Motion of Defendants to Dismiss the two separate Causes of Action set

forth in Plaintiff's Complaint; Plaintiff appeared by his attorney, Roy C. Fox, and defendants appeared by their attorney, Frank P. Weaver; the Court having considered said pleadings and argument of counsel and the request of Roy C. Fox as counsel for Plaintiff to strike from Plaintiff's second Cause of Action and from Exhibit "A" attached thereto all reference to house No. 6 occupied by M. W. Callaway and to strike from the prayer of said Complaint that portion of the prayer relating to house No. 6 occupied by M. W. Callaway, and counsel having filed written briefs herein, and the Court having considered the same and having filed its Memorandum Opinion herein and being fully advised in the premises:

It Is Therefore, Ordered, Adjudged, and Decreed:

First: That Defendants' Motion to Dismiss Plaintiff's first Cause of Action be, and the same herewith is, granted.

Second: That the Clerk of the above-entitled Court be, and he herewith is, authorized and directed to strike from the second Cause of Action and from Exhibit "A" attached to Plaintiff's Complaint all reference to house No. 6 occupied by M. W. Callaway and to strike from the first paragraph of the prayer relating to Plaintiff's Complaint the following: "To M. W. Callaway, tenant of House No. 6, for the period from July 1, 1947, to April 1, 1948, overcharges in the total amount of \$150.00."

Third: That Defendants' Motion to Dismiss

Plaintiff's second Cause of Action be, and the same herewith is, denied.

Fourth: That Defendants shall have two weeks from entry of this Order in which to file their Answer herein.

Done in open Court this 14th day of January, 1949.

SAM M. DRIVER,
Judge.

Presented by:

FRANK P. WEAVER,
Attorney for Defendants.

Copy received this 10th day of January, 1949;
Notice of Presentment waived.

ROY C. FOX,
Attorney for Plaintiff.

[Endorsed]: Filed January 14, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: H. M. Gochmour and Mrs. H. M. Gochmour,
Defendants, and to your attorney, Frank P.
Weaver:

You and Each of You will please take notice that the plaintiff, Tighe E. Woods, Housing Expediter, appeals to the United States Circuit Court of Appeals for the 9th Circuit, from that portion of the Order filed in the above-entitled Court and cause on the 14th day of January, 1949, and signed by the Court on the 14th day of January, 1949, and reading as follows:

“First: That Defendants’ Motion to Dismiss Plaintiff’s first cause of Action be, and the same herewith is, granted.”

Dated at Seattle, Washington, this 21st day of January, 1949.

CLINTON J. CRANDALL,
ROY C. FOX,
Attorneys for Plaintiff.

Copy mailed to Appellee’s Counsel, 1/28/49.

A. A. LaFRAMBOISE,
Clerk.

[Title of Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of Washington,
County of King—ss.

Jeanette Bossart, being first duly sworn, deposes and says: That she is a citizen of the United States, over the age of eighteen (18) years; not a party to the above-entitled action, and competent to be a witness in said action; that she served the attached Notice of Appeal in the above-entitled case on Mr. Frank P. Weaver, Attorney for defendants, by mail on the 21st day of January, 1949, by enclosing a true and correct copy of said Notice of Appeal in a franked, sealed envelope, directed and addressed to: Mr. Frank P. Weaver, Attorney at Law, 204 Columbia Building, Spokane 8, Washington, and by depositing the same in the United States Post Office at Seattle, Washington, on the 21st day of January, 1949.

JEANETTE BOSSART.

Subscribed and sworn to before me this 21st day of January, 1949.

[Seal] CLINTON J. RANDALL,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed January 24, 1949.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,

Eastern District of Washington—ss.

I, A. A. LaFramboise, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify the foregoing typewritten pages numbered from 1 to 19, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and all other proceedings in the above-entitled cause, as are necessary to the hearing of the appeal therein in the United States Court of Appeals, as called for by the appellants in his Designation of Record on Appeal, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from that portion of the Order filed in said District Court on the 14th day of January, 1949, granting Defendants' Motion to Dismiss Plaintiff's First Cause of Action,—to the United States Court of Appeals for the Ninth Judicial Circuit, San Francisco, California.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Spokane in said District this 7th day of February, A.D. 1949.

[Seal] /s/ A. A. LaFRAMBOISE,
Clerk of the U. S. District Court, Eastern District
of Washington.

[Endorsed]: No. 12181. United States Court of Appeals for the Ninth Circuit. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, vs. H. M. Gochmour and Mrs. H. M. Gochmour, His Wife, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed February 9, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12181

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

H. M. GOCHNOUR and MRS. H. M. GOCH-
NOUR, his wife,

Defendants.

PLAINTIFF'S STATEMENT OF POINTS
ON APPEAL

The District Court Erred in,

1. Dismissing first claim stated in Plaintiff's Complaint on ground that action for equitable relief in nature of restitution did not survive termination of Emergency Price Control Act of 1942, as amended.

2. Holding that no action for equitable relief under Section 205(a) of Emergency Price Control Act of 1942 could be brought and carried on after termination of that Act.

Dated at Seattle, Washington, this 24th day of February, 1949.

/s/ CLINTON J. CRANDALL,

/s/ ROY C. FOX,

Attorneys for Plaintiff.

[Endorsed]: Filed February 28, 1949. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of Washington,
County of King—ss.

Jeanette Bossart, being first duly sworn, deposes and says: That she is a citizen of the United States, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness in said action; that she served the attached Designation of Record on Appeal and Plaintiff's Statement of Points on Appeal in the above-entitled case on Frank P. Weaver, Attorney for defendants, by mail on the 24th day of February, 1949, by enclosing true and correct copies of said Designation of Record on Appeal and Plaintiff's Statement of Points on Appeal in a franked, sealed envelope, directed and addressed to: Weaver and Jones, Lawyers, Attention Frank P. Weaver, 204 Columbia Building, Spokane 8, Washington, and by depositing the same in the United States Post Office at Seattle, Washington, on the 24th day of February, 1949.

/s/ JEANETTE BOSSART.

Subscribed and sworn to before me this 24th day of February, 1949.

[Seal] /s/ CLINTON J. CRANDALL,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed February 28, 1949. Paul P. O'Brien, Clerk.

